PEPARTMENT of the INTERIOR

news release

FISH AND WILDLIFE SERVICE

For Release September 27, 1978

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INTERIOR DEPARTMENT TO CURTAIL ACQUISITION OF WETLANDS FOR WATERFOWL IN NORTH DAKOTA

Interior Department programs to acquire wetland habitat for waterfowl in North Dakota will be severely curtailed unless restrictions imposed by the State on such acquisitions are removed, Robert L. Herbst, Assistant Secretary for Fish and Wildlife and Parks, has announced.

In a letter sent to North Dakota Governor Arthur A. Link on September 22, Herbst said that a law passed in 1977 by the State legislature had left the U.S. Fish and Wildlife Service with no alternative but to cease acquisition of easements (leases) on wetlands in North Dakota. Herbst also termed "unacceptable" additional restrictions recently imposed by the Governor on fee title acquisitions (outright purchases). He said that the Fish and Wildlife Service would not be able to make any more fee title purchases unless Governor Link removed or did not enforce the new restrictions.

Curtailment of the Fish and Wildlife Service wetlands acquisition program in North Dakota could have significant effects on future numbers of ducks in the United States, according to Service biologists. Six to seven million adult ducks breed in the prairie wetlands of North Dakota and surrounding States each year—more than any other area in the country except Alaska. Prairie wetlands, however, are being rapidly destroyed. Recent estimates indicate that some 15 to 20 thousand acres of prairie wetlands are being drained annually in North Dakota, mostly by private landowners.

The Fish and Wildlife Service has not taken any easements on North Dakota wetlands since July 1, 1977, when the State law restricting wetlands acquisitions took effect. Acquisition of easements was halted primarily because of a provision of the law that requires the termination of easements if the landowner dies or sells the land. Under this provision the duration of any easement becomes uncertain and it is therefore impossible to determine fair payment for the land, as required by Federal law. In his letter to Governor Link, Assistant Secretary Herbst said that the Interior Department has decided that the expenditure of duck stamp revenues for wetlands acquisitions under such uncertain conditions would be "an unwise and possibly unlawful use of limited acquisition dollars." Herbst said he would not approve the purchase of easements under these conditions.

Herbst also expressed concern about restrictions that were not included in the 1977 law, but which the Governor has said must be met before he will approve Federal fee acquisition proposals. The Governor's conditions are that the acquisitions must be credited as part of the lands that must be acquired to mitigate the effects on wildlife of the Garrison Diversion Project, and that title to the land will pass to the State if the Garrison Project is not completed by a given date. Herbst said that these restrictions imposed "unreasonable constraints" and that, while the Fish and Wildlife Service would continue to take options on fee acquisitions, no purchases would be made unless the conditions are withdrawn or the purchases receive the Governor's approval without reference to the new conditions.

The Interior Department does not plan to challenge the State's legislation in court, but lawyers for the Department believe that the restrictions will eventually be challenged by other parties because their practical effect is to prohibit private landowners from selling their land to whomever they wish.

The Federal Government is obligated to protect ducks, geese, and other migratory birds and their habitats under treaties with Great Britain (for Canada), Japan, Mexico, and the Soviet Union. Federal law also mandates the protection of migratory birds.

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